

**BellSouth Telecommunications, Inc.**  
**Legal Department**  
1600 Williams Street  
Suite 5200  
Columbia, SC 29201

**Patrick W. Turner**  
General Counsel-South Carolina

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November 19, 2004

Mr. George N. Dorn, Jr.  
Interim Executive Director  
Public Service Commission of South Carolina  
Post Office Drawer 11649  
Columbia, South Carolina 29211


Re: Mr. and Mrs. James Tarmann v. Duke Power Co., et al.  
Docket No. 2002-57-EC

Dear Mr. Dorn:

Enclosed for filing are the original and ten (10) copies of BellSouth Telecommunications, Inc.'s Notice of Discontinuance of Service to the Tarmanns in the above-referenced matter.

By copy of this letter, I am serving copies of this Notice upon all parties of record as reflected on the attached Certificate of Service.

Sincerely,



Patrick W. Turner

PWT/nml  
Enclosure

cc: Mr. and Mrs. James Tarmann  
F. David Butler, Esquire  
Richard L. Whitt, Esquire

559885

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA**

**DOCKET NO. 2002-57-EC**

IN RE:

Mr. and Mrs. James Tarmann,	)
Complainants,	)
	)
vs.	)
	)
Duke Power Company, BellSouth	)
Telecommunications, Inc., and the	)
Public Service Commission Staff,	)
Respondents.	)
_____	)

**BELLSOUTH TELECOMMUNICATIONS, INC.'S  
NOTICE OF DISCONTINUANCE OF SERVICE  
TO THE TARMANNS**

As explained in more detail below, since the Public Service Commission of South Carolina ("Commission") entered its "Order Ruling on Complaint"<sup>1</sup> and its "Order Ruling on Petition for Clarification"<sup>2</sup> in this docket, BellSouth Telecommunications, Inc. ("BellSouth") has made diligent and good-faith efforts to comply with those Orders. Recently, however, Mr. Tarmann provided written notice that if BellSouth, its employees, or its representatives return to his property, they will be charged with "TRESPASSING AFTER NOTICE (S.C. Code 16-11-600)."<sup>3</sup> As a result, Mr. Tarmann has failed to

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<sup>1</sup> See Order Ruling on Complaint, *In Re: Mr. & Mrs. James Tarmann v. Duke Power, BellSouth, and the Public Service Commission Staff*, Order No. 2003-358 in Docket No. 2002-57-EC (June 13, 2003).

<sup>2</sup> See Order Ruling on Petition for Clarification, *In Re: Mr. & Mrs. James Tarmann v. Duke Power, BellSouth, and the Public Service Commission Staff*, Order No. 2003-575 in Docket No. 2002-57-EC (September 18, 2003).

<sup>3</sup> Attachment A to this Notice is a letter from Mr. Tarmann to which the written notice is attached.

permit BellSouth reasonable access to its facilities in violation of Commission Rule 103-627. Pursuant to Commission Rule 103-625.g, therefore, BellSouth hereby notifies the Tarmanns that on or after 1:00 a.m. on Tuesday, November 30, 2004, BellSouth will discontinue all of the telecommunications services it provides to the Tarmanns.

## **I. FACTS**

As explained in BellSouth's April 5, 2004 "Notice Regarding Facilities on the Rights-of-Way Running to the Tarmanns' Property,"<sup>4</sup> BellSouth representatives visited the Tarmanns' property in February 2004 with the intention of checking for and burying any exposed telephone lines located within the right-of-way, covering them with dirt, and placing gravel and rock dust in an attempt to prevent erosion that might expose these lines in the future. Before they could begin this work, however, Mr. Tarmann arrived and ordered them to leave what he referred to as his property. As a result, BellSouth filed its Notice informing the Tarmanns that BellSouth does not intend to send its employees, agents, and/or independent contractors to the right-of-way running to the Tarmanns' property for any reason, including but not limited to maintaining or repairing the service of the Tarmanns or of any other customers that are served by these facilities.

After BellSouth filed its Notice, the Commission referred this matter to the Office of Regulatory Staff ("the ORS"). As a result of the diligent and good-faith efforts of the ORS and the Staff Attorney of the Labor, Commerce and Industry Committee of the South Carolina House of Representatives ("LCI Staff Attorney"), a visit to the Tarmanns' property was arranged for October 26, 2004. This visit was attended by Mrs. Tarmann,

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<sup>4</sup> See BellSouth Telecommunications, Inc.'s Notice Regarding Facilities on the Right-of-Way Running to the Tarmanns' Property, *In Re: Mr. & Mrs. James Tarmann v. Duke Power, BellSouth, and the Public Service Commission Staff*, Docket No. 2002-57-EC (April 5, 2004).

the LCI Staff Attorney, representatives of BellSouth, representatives of Duke Power, representatives of the ORS, and a local Sheriff's Deputy.

Significantly, this visit was coordinated with Mrs. Tarmann in advance. Mrs. Tarmann knew the visit would occur on that date, and she was present at all times during the visit. At no time during the visit did she object to BellSouth's presence or otherwise suggest that BellSouth did not have permission to be on the property.

On November 17, 2004, BellSouth received a letter from Mr. Tarmann that included, as an attachment, a Trespass Notice directed to "BellSouth Telecommunications, Inc., employees and representatives."<sup>5</sup> The Trespass Notice provides, in pertinent part, that "[i]f you fail to honor this notice and return to my property, you will be charged with TRESPASSING AFTER NOTICE (S.C. Code 16-11-600)." The code section referenced in the Notice provides, in pertinent part, that:

Every entry upon the . . . lands of another, after notice from the owner or tenant prohibiting such entry, shall be a misdemeanor and be punished by a fine not to exceed one hundred dollars, or by imprisonment with hard labor on the public works of the county for not exceeding thirty days.

*See* S.C. Code Ann. §16-11-600.

## **II. VIOLATION OF COMMISSION RULES**

One of the Commission's rules provides that "[t]he authorized agents of the [telephone] utility shall have the right of access to the premises supplied with telephone service, at reasonable hours, for the purposes of maintenance, removal and inspection or for any other purpose which is proper and necessary in the conduct of the [telephone] utility's business." *See* Rule 103-627. This rule has "the force of law." *See* S.C. Code Ann. §58-9-810. Mr. Tarmann's notice is directed to BellSouth, its employees, and its

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<sup>5</sup> Attachment A to this Notice is a copy of the Letter and the attached Trespass Notice.

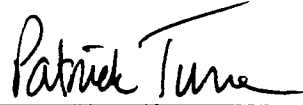
representatives. In plain and unmistakable language, it states that "[i]f you fail to honor this notice and return to my property, you will be charged with" a criminal offense punishable by fines or imprisonment with hard labor. This notice undeniably denies BellSouth its "right of access to the premises supplied with telephone service . . . ."

Another Commission Rule allows BellSouth to refuse or discontinue service for "failure of the customer to permit the [telephone] utility reasonable access to its equipment." *See* Rule 103-625.g. This rule has "the force of law." *See* S.C. Code Ann. §58-9-810. By issuing the Trespass Notice, Mr. Tarmann undeniably has failed to permit BellSouth reasonable access to its equipment and facilities, and BellSouth undeniably is authorized to refuse or discontinue the Tarmanns' service.

### **III. BELL SOUTH'S NOTICE OF DISCONTINUANCE OF SERVICE TO THE TARMANNS.**

Pursuant to Commission Rule 103-625.g, BellSouth hereby notifies the Tarmanns that on or after 1:00 a.m. on Tuesday, November 30, 2004, BellSouth will discontinue all of the telecommunications services it provides to the Tarmanns. The communications marketplace is highly competitive, and the Tarmanns can choose to receive service from any number of competitors including, without limitation, wireless providers. The Tarmanns may, of course, choose to receive services from a reseller or from a provider that purchases unbundled network elements from BellSouth. BellSouth, however, notifies the Tarmanns that if they do so, BellSouth will not send its employees, agents, and/or independent contractors to the Tarmanns' property or to the right-of-way running to the Tarmanns' for any reason, including but not limited to maintaining the facilities that provide such service to the Tarmanns.

Respectfully submitted this 19th day of November, 2004.

A handwritten signature in black ink that reads "Patrick Turner". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

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PATRICK W. TURNER  
1600 Williams Street, Suite 5200  
Columbia, South Carolina 29201  
803-401-2900  
patrick.turner@bellsouth.com

COUNSEL FOR BELLSOUTH  
TELECOMMUNICATIONS, INC.

# **ATTACHMENT A**

PWT

November 12, 2004

Office of Regulatory Staff  
P.O. Box 11263  
Columbia, SC 29211

RE: James and Patricia Tarmann Vs. Duke Power, BellSouth,  
And the South Carolina Public Service Commission.

To Whom It May Concern:

It should be noted for the record that no one represents me in the above mentioned complaint, but myself personally.


Furthermore, it should be noted for the record that I have not been contacted by the Office of Regulatory Staff, nor have I granted them the right to act on my behalf as my representative or agent legal or otherwise in the resolution of the above referenced matter. Any such acts to resolve this matter without my direct participation in the process and resolution will be a violation of my civil rights, and will be challenged.

As conveyed numerous times, I will not tolerate trespassing on my property without my explicit consent, and presents. All parties have now violated this right. Any information obtained, or acts committed while trespassing will be challenged.

As conveyed numerous times, I will not tolerate trespassing!

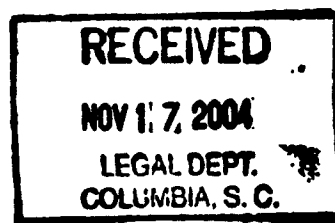
"See Attached Trespass Notice"

I am also fully aware of the slanderous remarks and acts against my character, that I am a threat to the health and welfare of the resolution of this complaint, and will be addressed in the near future, among other charges.

Sincerely,  
  
James Tarmann

Jt

c: Bellsouth  
Duke Power  
PSC  
Patricia Tarmann





1. The owner - Remove this page from page two (2)

02103

# TRESPASS NOTICE

(Notice of No Trespassing)  
Greenville County Sheriff's Office  
4 McGee Street Greenville, SC

11/13/04  
Date

TO: BellSouth Telecommunications, Inc., employees and representative  
name of person on notice of no trespass

1600 William Street, Ste 5200  
street address

Columbia SC 29201  
city, state, zip code

This letter is to notify you that you are hereby placed on TRESPASS NOTICE on any and all property, which I own located at:

1291 White Horse Rd Ext

Travelers Rest, South Carolina 29690

If you fail to honor this notice and return to my property, you will be charged with TRESPASSING AFTER NOTICE (S.C. Code 16-11-600).

James Yarm  
Property owner signature

11/13/04  
Date

Mail this notice certified mail, with restricted delivery, return receipt requested.  
Keep the receipt and a copy of this letter for your file.

Property Owner - Read page two (2) for important instructions.

1


STATE OF SOUTH CAROLINA                    )  
  )  
COUNTY OF RICHLAND                    )     CERTIFICATE OF SERVICE  
  )     DOCKET No. 2002-57-EC

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused BellSouth Telecommunications, Inc.'s Notice of Discontinuance of Service to the Tarmanns to be served upon all parties of record in the manner described below and addressed to the following this November 22, 2004:

Mr. and Mrs. James Tarmann  
1291 Whitehorse Road Ext.  
Travelers Rest, SC 29690  
(Via Federal Express)

F. David Butler, Esquire  
Jocelyn G. Boyd, Esquire  
SC Public Service Commission  
Post Office Drawer 11649  
Columbia, SC 29211  
(Via Hand Delivery)

Richard L. Whitt, Esquire  
Austin, Lewis & Rogers, P.A.  
508 Hampton Street, Third Floor  
Columbia, SC 29201  
(Via Facsimile and United States Postal Service)

  
Nyla M. Laney